IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1325

JOHN OWEN TYLER,

Petitioner,

versus

THE STATE OF GEORGIA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

WESLEY R. ASINOF
Attorney for Petitioner
P.O. Box 461
Fayetteville, Georgia 30214

SCOFIELDS' QUALITY PRINTERS, P. O. BOX 53096, N. O., LA. 70153 - 504/822-1611

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1978

No.

JOHN OWEN TYLER,
Petitioner,

versus

THE STATE OF GEORGIA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

Now comes John Owen Tyler, and petitions this Honorable Court for a writ of certiorari to review the judgment of the Court of Appeals of the State of Georgia in the case of Tyler v. State, 56233, and shows:

REFERENCE TO REPORTS

The opinion of the Court of Appeals of Georgia is reported unofficially in 249 S.E. 2d 109, (advance sheet

of January 4, 1979), and a copy is appended to this petition, and marked Appendix A.

STATEMENT AS TO GROUNDS OF JURISDICTION

(1) The date of the judgment of the Court of Appeals sought to be reviewed and the time of its entry was September 12, 1978.

(2) The date of the order of the Court of Appeals denying a motion for rehearing was October 5, 1978, and a petition for the writ of certiorari was denied by the Supreme Court of Georgia on November 30, 1978, and a copy of the order of the Court of Appeals of Georgia denying the motion for a rehearing is attached to this petition, and marked Appendix B.

(3) The statutory provision believed to confer upon this Court jurisdiction to review the judgment in question by writ of certiorari is Title 28 U.S.C. §1257 (3) authorizing a review by this Court of the judgment of the highest court of a State in which a decision could be had where any right, privilege or immunity is specially set up or claimed under the statutes of the United States.

QUESTIONS PRESENTED FOR REVIEW

1.

Whether the admission into evidence in a State criminal trial of a memorandum of the payment of

federal wagering excise tax payments if a violation of 26 U.S.C.A. §4424 prohibiting the divulgence of any return, payment or registration, and making its use against such taxpayer in any criminal proceeding a violation of federal law.

FEDERAL STATUTES INVOLVED

Title 26, §4424 (c) U.S.C.A.:

"USE OF DOCUMENTS POSSESSED BY TAXPAYER — Except in connection with the administration or civil or criminal enforcement of any tax imposed by this title—

(1) any stamp denoting payment of the special tax under this chapter,

(2) any original, copy, or abstract possessed by a taxpayer of any return, payment, or registration made by such taxpayer pursuant to this chapter, and

(3) any information come at by the exploitation of any such document, shall not be used against such taxpayer in any criminal proceeding."

STATEMENT OF THE CASE

The petitioner was indicted and tried in the Superior Court of Fulton County, in the State of Georgia, for the state offense of communicating gambling informa-

tion, a felony under the laws of that state. The bulk of the evidence offered against petitioner consisted of gambling records seized by state officers pursuant to a search warrant. Among the items seized was a record or memorandum consisting of a notebook containing sheets of paper with totals. The total of 2 percent appeared on this exhibit, this being the amount of excise tax imposed on wagers under the Internal Revenue Code.

Prior to a trial on the merits counsel for petitioner filed a motion to suppress, and after a hearing the trial court entered an order denying the motion, "except as to the tax stamp, the tax returns, and other items required to be suppressed under 26 U.S.C. Sec. 4424 (c)."

On the trial of the case on its merits the State tendered State's Exhibit #37, identified as "a notebook containing sheets of paper . . . . with totals at two percent. . . . ." (Tr. 264). Counsel for petitioner objected, and the trial court overruled the objection and admitted the evidence. Petitioner was convicted, and on appeal raised the federal question under §4424(c). The Court of Appeals refused to decide the federal question, holding that "the objection urged on appeal is not the same objection urged at trial." The Georgia Supreme Court denied certiorari.

ARGUMENT

The original Wagering Tax Act, requiring gamblers to register, pay an annual occupational tax, and pay ex-

cise tax of 10% on wagers placed with them, was held "constitutionally unenforceable" by this Court in *Marchetti v. United States*, 390 U.S. 39 (88 S. Ct. 697) (1968), and in *Grosso v. United States*, 390 U.S. 62, (88 S. Ct. 709). The statute was later amended by congress so as to protect the taxpayer from disclosure. See: Pub. L. 93-499, §3 (c) (2), Oct. 29, 1974, 88 Stat. 1551. The ten percent excise tax was reduced to two percent.

The Wagering Tax Act, as thus amended by congress, protects the taxpayer from disclosure. This in turn renders the statute constitutionally enforceable. The trial court in this case violated the rights of the petitioner in allowing disclosure, and the Court of Appeals has decided a federal question on a non-federal ground, that is to say, the Georgia rule requiring the objection, and the grounds thereof, to be stated at the time the evidence is offered. In *Staub v. City of Baxley, Ga.*, 355 U.S. 313, (78 S. Ct. 277), the Georgia Court of Appeals refused to pass on the constitutionality of city ordinance because petitioner did not make an attempt to secure permit under ordinance attacked and did not attack specific sections of same ordinance, as required by state practice. The Supreme Court of the United States held that this did not preclude the consideration of the federal question involved. The Supreme Court further held in the same case that whether the rights under federal constitution asserted by appellant were given due recognition by state court was a question as to which appellant was entitled to invoke judgment of United States Supreme Court, and that Supreme

Court had the right to inquire, not only whether the right was denied in express terms, but whether it was denied in substance and effect, by putting forward non-federal grounds of decision that were without fair or substantial support.

In the instant case federal law required petitioner to register as a gambler, obtain the stamp, and pay the two percent excise tax. He could not constitutionally decline to do so, because congress has, by the use of §4424 (c), shielded him from disclosure. This was the cloak of immunity to which he was absolutely entitled. The State of Georgia, by a procedural bar which was not fairly placed upon him, convicted him of violation of its gambling laws by the use of evidence protected from disclosure by federal law. The trial judge was aware of §4424 (c) when it allowed this incriminating evidence to be disclosed to the jury. Petitioner's conviction was thus tainted by the use of this evidence.

CONCLUSION

The writ of certiorari should be granted, and the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

Wesley R. Asinof
Attorney for Petitioner
P. O. Box 461
Fayetteville, Georgia 30214

CERTIFICATE

I hereby certify that three copies of the above and foregoing Petition for Writ of Certiorari to the Court of Appeals of Georgia were mailed, postage prepaid, to the following:

Lewis R. Slaton,
District Attorney,
Fulton County Courthouse,
Atlanta, Georgia 30303

Hon. Arthur Bolton,
Attorney General of Georgia
State Judicial Building
Atlanta, Georgia 30334

This the ____ day of February, 1979.

WESLEY R. ASINOF

APPENDIX

56233. TYLER v. THE STATE

QUILLIAN, Presiding Judge.

John O. Tyler appeals his conviction of communicating gambling information. The principal evidence for the State consisted of tape recorded telephone conversations obtained through use of a wiretapping device authorized by an investigative warrant issued by the Fulton County Superior Court. The trial court overruled a motion to suppress the evidence obtained by the wiretapping and also allowed in evidence a record maintained in the defendant's home which listed bets made with him, but also included a separate computation of Federal 2% tax on wagers recorded on those papers. Defendant brings this appeal. *Held:*

1. Defendant has enumerated three errors. The first two enumerations are controlled adversely to the defendant by *Morrow v. State*, Ga. App. (No. 56234, decided September, 1978).

2. The third enumeration of error contends that Title 26 U.S.C. 4424, known as the "Wagering Tax Act," prohibits "the divulgence of any return, payment or registration made pursuant to the Wagering Tax Act." Thus, he argues, the papers containing the computation of the wager tax should have been suppressed.

Pretermitting the issue of whether the defendant's computations in his home come within the parameters of the Act, the objection urged on appeal is not the same objection urged at trial. This an appellant cannot do. Where the objection interposed at trial is not argued on appeal it is considered abandoned. *Carney v. State*, 134 Ga. App. 816 (3) (216 SE2d 617). And, where an enumerated error attempts to raise for the first time on appeal an objection which was not presented to the trial court for a ruling, nothing is presented for review. *Patterson v. State*, 228 Ga. 389, 390 (185 SE2d 762). Accordingly, where the objection argued below is not argued here it is abandoned and where an entirely different objection is present on appeal, we cannot consider it because this is a court for review and correction of error committed in the trial court. *Kingston v. State*, 127 Ga. App. 660, 661 (194 SE2d 675).

Judgment affirmed, Webb and McMurray, JJ., concur.

COURT OF APPEALS
OF THE STATE OF GEORGIA
Atlanta, October 5, 1978

The Honorable Court of Appeals met pursuant to adjournment. The following order was passed:

56233. John O. Tyler v. The State

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

COURT OF APPEALS OF THE STATE OF GEORGIA

Clerk's Office, Atlanta, October 5, 1978

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ MORGAN THOMAS
Clerk.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78-1325

JOHN OWEN TYLER,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

RESPONDENT'S BRIEF IN OPPOSITION

ARTHUR K. BOLTON
Attorney General
ROBERT S. STUBBS, II
Executive Assistant
Attorney General
DON A. LANGHAM
First Assistant
Attorney General
JOHN C. WALDEN
Senior Assistant
Attorney General
MARY BETH WESTMORELAND
Staff Assistant
Attorney General
LEWIS R. SLATON
District Attorney
Atlanta Judicial Circuit
H. ALLEN MOYE
Assistant District Attorney
Atlanta Judicial Circuit

Please serve:
MARY BETH WESTMORELAND
132 State Judicial Bldg.
40 Capitol Square, S.W.
Atlanta, Georgia 30334
(404) 656-3339

INDEX

TABLE OF AUTHORITIES

CASES CITED: Page

(Continued)

Page

STATUTES CITED:

OTHER AUTHORITY:

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1978

NO. 78-1325

JOHN OWEN TYLER,
Petitioner,
v.
STATE OF GEORGIA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF GEORGIA

BRIEF IN OPPOSITION FOR THE RESPONDENT

QUESTIONS PRESENTED

1.

Did the Court of Appeals of Georgia properly refuse to review the issue of the application of the Wagering Tax Act to State's Exhibit No. 37?

2.

Was State's Exhibit No. 37 excludable under 26 U.S.C. § 4424(c)?

STATEMENT OF THE CASE

Petitioner, John Owen Tyler, was indicted by the grand jury of Fulton County, Georgia, on February 20, 1976, and was charged with the offense of communicating gambling information, a violation of Ga. Code § 26-2706. The indictment was one of seven returned the same day as the culmination of a five-month investigation of organized bookmaking in the metropolitan Atlanta area. Petitioner entered a plea of not guilty. (R. 4, 5).

The bulk of Respondent's case against Petitioner consisted of evidence seized as a result of both a court-authorized electronic surveillance and the execution of a search warrant for Petitioner's residence. Petitioner moved to suppress all such evidence (R. 8-17), and a hearing was held in the Superior Court of Fulton County commencing on June 2, 1976.[1/] At the close of the hearing, and before considering briefs filed, Judge Sam Phillips McKenzie ruled:

> After hearing argument and considering the evidence in the above-captioned case, Defendant John Owen Tyler's Motion to Suppress as Amended is hereby denied, except as to the tax stamp, the tax returns, and other items required to be suppressed under 26 U.S.C. § 4424(c).

(R. 31).

[1/] The transcript of the hearing on the motion to suppress will be referred to as "M.T."

Subsequently, between June 10 and June 15, Petitioner was tried before Judge McKenzie and a jury. The jury required only 45 minutes deliberation to convict Petitioner, and the Court imposed a sentence of five years and a fine of $5,000.00. (R. 53, 58; T. 634-38, 650).

During the trial, it was proved that Petitioner and his son operated Tyler Sporting Events Service from Petitioner's home located in Conyers, Rockdale County, Georgia. (T. 115, 116, 488-89, 685-86). The firm had four telephones working conjunctively during the fall of 1975 and January, 1976. On February 26, 1976, three of the lines were suspended. (T. 115-17, 685). During December, 1975, Petitioner had conversations with others over the telephone listed to Tyler Sporting Events Service, during which he placed and accepted bets and imparted betting information. (T. 330-420). The tape of each call was played for the jury, the voice of each person was identified, and the content was analyzed by a duly-qualified expert.

Among the documents tendered by the Respondent was State's Exhibit No. 37, a special notebook which was located near a telephone at the Conyers address for Tyler Sporting Events Service. (T. 264, 297).[2/] This document is the basis of Petitioner's case before this Court.

Petitioner's conviction was affirmed by the Georgia Court of Appeals on September 12, 1978. Tyler v. State, 147 Ga. App. 394, 249 S.E. 2d 109 (1978). The Supreme Court of Georgia denied a petition for a writ of certiorari on November 30, 1978.

[2/] State's Exhibit No. 37 is found at pages 706-10 of the transcript and will be thoroughly described subsequently.

Further facts will be discussed as necessary for a more thorough illumination of the issues raised by the present petition.

REASONS FOR NOT GRANTING THE WRIT

A. THE COURT OF APPEALS OF GEORGIA PROPERLY REFUSED TO REVIEW THE QUESTION RAISED BY PETITIONER ON AN ADEQUATE AND INDEPENDENT STATE GROUND.

Petitioner alleges that the trial court in the case at bar improperly admitted evidence of federal wagering tax payments. The documents to which Petitioner objects at this time are found in State's Exhibit No. 37, consisting of four pages from a special notebook found near the telephone in the gameroom of Petitioner's home. At the hearing on Petitioner's motion to suppress, Petitioner objected to the admission of any testimony regarding a wagering tax stamp. (M.T. 495). Petitioner further asserted that his rights under the Fifth Amendment were violated by the seizure of the tax stamp issued by the Internal Revenue Service. (M.T. 618). Subsequently, counsel stated that the objection was to the search warrant of the Tyler home, only as it pertained to the seizure of the wagering tax stamp. (M.T. 620).

At trial, when the State offered State's Exhibit No. 37, which contains the records in question, Petitioner's counsel objected to its introduction, stating "same objection" referring to his continuing objection. (T. 424). The continuing objection was stated early in the trial by the court: ". . . this is a continuing objection as to any testimony that derives from the Walton County electronic surveillance. I'll let that be a continuing objection without the necessity of stating it." (T. 148). The desire was to preserve the objection raised in the

Motion to Suppress the electronic surveillance. (T. 149-50). There was no mention of the federal statute as a basis for the objection. The trial court admitted the exhibit over the continuing objection. The Court of Appeals of Georgia held that the question of whether the records came within the Wagering Tax Act, specifically 26 U.S.C. § 4424(c), could not be considered by that court, as the objection urged on appeal was not the same objection urged at trial. Tyler v. State, 147 Ga. App. 394, 249 S.E. 2d 109 (1978).

It is well-settled law in Georgia that an objection must be presented to the trial court for a ruling; otherwise, nothing is presented for review by the appellate courts. Patterson v. State, 228 Ga. 389, 390, 185 S.E. 2d 762 (1971). The Georgia Supreme Court has held on numerous occasions that even though a ground for objection to evidence existed which would have been good if made at the appropriate time,

> . . . if the objection made be not good or not made at all or made for the first time in the motion for a new trial or made only before this court, the Supreme Court [of Georgia] being a court alone for the trial and correction of errors of law committed in the trial court, will not set aside the verdict and judgment of conviction on account of the admission of such evidence.

Starr v. State, 229 Ga. 181, 183, 190 S.E. 2d 58 (1972); Salem v. State, 228 Ga. 186, 184 S.E. 2d 650 (1971); House v. State, 227 Ga. 257, 181 S.E. 2d 31 (1971); Hart v. State, 227 Ga. 171, 179 S.E. 2d 346 (1971); Edwards v. State, 224 Ga. 648, 164 S.E. 2d 120 (1968). Thus, it is apparent that the Georgia courts in the case at bar applied a well-established procedural rule, thereby barring review of the issue raised by the Petitioner.

The Supreme Court of the United States has declined to review state court judgments based on adequate and independent state grounds, as long as there is no discrimination merely because a federal question is involved. Henry v. Mississippi, 379 U.S. 443 (1965); Herb v. Pitcairn, 324 U.S. 117, 118 (1944). Procedural defects in state proceedings may serve as a sufficient state ground, if the state's insistence on compliance with the rules serves a legitimate state interest. Henry v. Mississippi, 379 U.S. at 448.

The Georgia rule requiring an objection to be made at trial serves a legitimate state interest. The rule gives the opportunity to conduct the trial without using possibly tainted evidence and may avoid a new trial. This gives the trial court a chance to correct any errors as they occur, rather than having the issue decided by an appellate court on a cold record. Thus, the rule serves the state's interest as well as the defendant's interest in avoiding delay and wasting time in the disposition of the case. See Henry v. Mississippi, 379 U.S. at 448.

The Georgia Court of Appeals properly declined to review the issue of the application of the Wagering Tax Act based on an adequate and independent state ground. Therefore, Respondent submits that this Court, like the Georgia appellate courts, should decline to review Petitioner's case.

B. STATE'S EXHIBIT NO. 37 WAS NOT EXCLUDABLE UNDER 26 U.S.C. § 4424(c).

Petitioner asks this Court to assume without the benefit of any argument that 26 U.S.C. § 4424(c) precluded Respondent's use at trial of State's Exhibit No. 37. Respondent argues that this assumption is unwarranted.

The documents to which Petitioner objects, State's Exhibit No. 37, consist of four pages from a special notebook found near the telephone in the gameroom of Petitioner's home. (T. 297). Each page is headed with a notation showing the month and year from September to December, 1975. Each page contains two columns with the first column reflecting the day of the week and the date, and the second column containing a list of amounts corresponding to the days in column one. Each page, except the last, contains a total of the amounts contained in column two and the notation "2% Tax" followed by a figure. (T. 706-10).

Review of the trial transcript shows that these records are not those of Petitioner, but those of Petitioner's son, Frank Owen Tyler. (T. 487). After being called as a witness by the Petitioner, Frank Tyler testified that he was a gambler who worked and lived in his father's [Petitioner's] house. (T. 488, 529). Frank Tyler testified that he had a "special license" issued by the federal government, and that State's Exhibit No. 37 was a book containing payments which he [Frank Owen Tyler] made in connection with that license. (T. 489-90).

Thereafter, at the request of Petitioner's trial counsel, Frank Tyler provided handwriting exemplars, marked as Defendant's Exhibits 8 through 11, which were compared to State's Exhibit No. 37 by a handwriting expert who testified that the same person prepared both sets of documents. (T. 742-45, 523). Thus,

Petitioner proved at trial that the records in State's Exhibit No. 37 did not belong to Petitioner, but that Petitioner's son who is living in Petitioner's house, was a "licensed" gambler, who paid tax to the federal government, and that the records in question belong to Frank Tyler.

Based on these factual considerations, Respondent argues that 26 U.S.C. § 4424(c) did not preclude the use of State's Exhibit No. 37. This code section requires suppression in a civil or criminal case against the taxpayer only of records belonging to that taxpayer. This construction of the statute is required by the plain language of the statute itself and the history of the statute. This section was enacted in response to the decisions by this Court in Marchetti v. United States, 390 U.S. 39 (1968) and Grosso v. United States, 390 U.S. 62 (1968). In Grosso and Marchetti, this Court held that a gambler could invoke the Fifth Amendment privilege in a federal prosecution for failure to register, report or pay the excise tax levied on wagers.

The registration and reporting requirements of the wagering tax provision, as they stood until 1974, created a "real and appreciable" danger of self-incrimination, since the Internal Revenue Service was not precluded from making available to the public the information provided by the gambler. This Court refused to preempt Congress in seeking a resolution of the problem.

In 1974, Congress legislatively granted immunity to a taxpayer who registered, received a tax stamp, filed wagering tax returns and paid his taxes in accordance with 26 U.S.C. § 4401. Sections 4424(b) and (c) create a use and derivative use immunity for all records in the possession of the taxpayer in a prosecution for other than the enforcement of the tax liability. United States v. O'Brien, 420 F. Supp. 834 (D. Conn. 1976), aff'd, 555 F. 2d 136 (2d Cir. 1977).

When granted, immunity is designed to replace the Fifth Amendment privilege, and need be no broader than the protection afforded by that privilege. Counselman v. Hitchcock, 142 U.S. 547, 585 (1892).

Frank Tyler could not be compelled to give testimony against himself by any court or prosecutor, nor could he be compelled by way of the wagering tax to give incriminatory information against himself. However, Frank Tyler could be compelled through a grant of use immunity, to testify against his father and that information could be used against Petitioner. Ga. Code Ann. § 38-1715; 18 U.S.C. § 6001, et seq.

Furthermore, the only documents precluded by 26 U.S.C. § 4424(c) are the "stamp denoting payment of the special tax" and the "original copy or abstract . . . of any return, payment or registration. . . ." 26 U.S.C. § 4424(c)(1), (2). Respondent submits that State's Exhibit No. 37 does not come within this provision. It is also clear than the document itself was not acquired by the improper use of any document excludable under the code. See 26 U.S.C. § 4424(c)(3). At the conclusion of the electronic surveillance conducted in compliance with 18 U.S.C. § 2510, et seq., and Ga. Code § 26-3004,[3/] a search warrant was issued authorizing the search of Petitioner's home. (T. 256, 257, 700-05; M.T. 491, 536-38, 937). Various items were found, including the special notebook, telephone bills, a football schedule, legal pads, an ash can containing burned paper and a line sheet. (T. 264, 265, 700). Additionally, a gambling tax stamp was recovered inside State's Exhibit No. 37. (M.T. 495). However, upon Petitioner's objection, the stamp itself was excluded. (M.T. 496). State's Exhibit No. 37 was not derived from the improper use of that stamp, in fact, the stamp was found inside the exhibit after the notebook had been seized.

[3/] See Morrow v. State, 147 Ga. App. 395, 249 S.E. 2d 110 (1978).

It is clear that the records in the present case are not a copy of any return, payment or registration as specifically set out in the act. Respondent also submits that the records do not constitute an abstract as defined by the code section. Although an abstract as used in this context is not defined in the Internal Revenue Code, the term generally refers to an abridgment or synopsis of a larger work, which, in its abridged or synopsis form, shows all the important matters shown in the larger work. See Harding v. Bedoll, 202 Mo. 625, 100 S.W. 638 (1907). State's Exhibit No. 37 did not contain all of the important facts contained in either a return, payment or registration.

A consideration of the record requirements of the wagering tax provisions of the Internal Revenue Code, 26 U.S.C. § 4401, et seq., will compel this Court to conclude that State's Exhibit No. 37 is the record required by 26 U.S.C. § 4403: "Each person liable for tax under this subchapter shall keep a daily record showing the gross amount of all wagers on which he is liable, in addition to all other records required pursuant to section 6001(a)." It is unlikely that Congress would employ the language found in § 4424(c)(2) when a reference to 26 U.S.C. § 4403 would have sufficed had the intent been to include the records required by that provision in the exclusions set out in § 4424(c)(2).

Congress made 26 U.S.C. § 4424(a) and (b) all-inclusive with regard to documents provided to the Internal Revenue Service by the taxpayer. However, "the amendment provides that certain documents related to the wagering taxes, and information obtained through such documents, may not be used against the taxpayer in any criminal proceeding. . . ." 1974 U.S. Code Cong. and Adm. News, 6228, 6233. [Emphasis added]. Thus, § 4424(c) is limited to certain documents specified in the subsection. This registration scheme is aimed at an "inherently suspect group" in an area "permeated with criminal statutes." One primary objective is to flush out the individuals involved in the illegal conduct for prosecution. United States v. Parente, 449 F. Supp. 905, 910-11 (D. Conn. 1978). This prosecutorial

interest is far more important than the interest in producing revenue. If the reverse were the case, Congress would not have simultaneously reduced the tax rate from ten percent to two percent.

If U.S.C. § 4424(c) is as all inclusive as Petitioner apparently assumes, Congress has seriously handicapped gambling prosecution in both federal and state courts. Any memoranda found in connection with a registered gambler would be subject to a claim that it is required by the government and, thus subject to suppression. Respondent argues that Congress never envisioned such a result and the scope of the items found in the taxpayers' possession which must be suppressed is restricted.

Thus, State's Exhibit No. 37 was not suppressable under 26 U.S.C. § 4424(c) and there is no merit to this issue raised in the petition for a writ of certiorari.

CONCLUSION

For the above and foregoing reasons, Respondent respectively requests this Court to deny the petition for writ of certiorari filed on behalf of John Owen Tyler.

Respectfully submitted,

ARTHUR K. BOLTON
Attorney General

ROBERT S. STUBBS, II
Executive Assistant
Attorney General

DON A. LANGHAM
First Assistant
Attorney General

JOHN C. WALDEN
Senior Assistant
Attorney General

MARY BETH WESTMORELAND
Staff Assistant
Attorney General

LEWIS R. SLATON
District Attorney
Atlanta Judicial Circuit

H. ALLEN MOYE
Assistant District Attorney
Atlanta Judicial Circuit

Please serve:

MARY BETH WESTMORELAND
132 State Judicial Bldg.
40 Capitol Square, S.W.
Atlanta, Georgia 30334
(404) 656-3339

CERTIFICATE OF SERVICE

I, Don A. Langham, Attorney for the Respondent, and a member of the Bar of the Supreme Court of the United States, hereby certify that in accordance with the rules of the Supreme Court of the United States, I have this day served a true and correct copy of this Brief in Opposition for the Respondent upon the Petitioner by depositing three copies of same in the United States mail, with proper address and adequate postage to:

Mr. Wesley R. Asinof
Attorney at Law
P. O. Box 461
Fayetteville, Georgia 30214

This 11th day of May, 1979.

DON A. LANGHAM